mention of any criminal liability, leaving a loophole for a distinction. A construction of the section to the effect that it shall apply only to such part of the wages as is earned by seamen on foreign vessels while in American waters seems strained and tortured. In reaching this result the principal case does not stand alone,[16] and the decision seems to effectuate the objects for which the statute was enacted.

LIABILITY OF A NOTARY PUBLIC ON HIS CERTIFICATE THAT A PERSON IS KNOWN TO HIM.—The legislature of one of our states has made it a misdemeanor for a notary public to take an acknowledgment of a written instrument when the parties have not appeared before him personally.[1] But in that very jurisdiction we find the court of last resort saying in astonishment, "And yet we were recently advised on the argument of a cause that reputable notaries are accustomed to take acknowledgments over the telephone."[2] It is not at all surprising, therefore, to find that in numerous instances notaries and their sureties have incurred liability because of similar careless practices in certifying that the persons acknowledging written instruments were in fact known to them to be the ones whose signatures were on the documents. A recent example is seen in the case of *Anderson* v. *Arohnson* (Cal. 1919) 184 Pac. 12. The defendant, a notary public, certified that the individual acknowledging a deed of trust was personally known to him to be the one whose signature appeared upon the instrument. As a matter of fact the signature was a forgery and the individual, an impostor. The notary acted on the strength of a short speaking acquaintance with the impostor, who had been introduced to him as part of a fraudulent scheme. The notary and his sureties were held liable to the plaintiff who advanced money on the security of the deed, the ground for decision being that the notary, under the circumstances, had been negligent in taking the acknowledgment.

It is well settled by the great weight of authority in this country that the acknowledgment of a written instrument is a ministerial function,[3] although a number of jurisdictions hold that the act is judicial

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[16]The Sutherland (D. C. 1919) 260 Fed. 247. *Cf.* The Hannington Court (D. C. 1918) 252 Fed. 211, where it appears the seamen deserted for reasons other than any refusal to pay half wages. In Sandberg *v.* McDonald, *supra*, footnote 14, the Supreme Court lent some sort of approval to the doctrine of the principal case. The libellant originally claimed half wages and the question arose as to whether advances made abroad could be deducted by the owners. The court held that they might and that therefore the libellant had recovered half of what was already earned by him. But had the court cared to declare that a seaman on a foreign vessel had no right to demand half wages while in an American port, the court could have stopped then and there and need not have considered the validity of the advances.

[1]Minn. Rev. Laws, 1905, §2661.

[2]Barnard *v.* Schuler (1907) 100 Minn. 289, 290, 110 N. W. 966.

[3]Penn. *v.* Garvin (1892) 56 Ark. 511, 20 S. W. 410 (*semble*); People *v.* Bartels (1891) 138 Ill. 322, 27 N. E. 1091; Learned *v.* Riley (1867) 96 Mass. 109; Read *v.* Toledo Loan Co. (1903) 68 Oh. St. 280, 67 N. E. 729.

in its nature.[4] The majority view would appear to be the sound one, especially in view of the fact that in every state, by statute, an acknowledgment may be taken by an inferior officer, such as a notary public.[5] The distinction between the act as a ministerial and as a judicial function becomes material when the resulting legal consequences are considered. Where the act of acknowledgment is considered judicial in its nature, the notary has in some instances been excused from liability for injuries flowing from his negligence;[6] but in jurisdictions where the other view is held, he has not fared so well.

In the absence of statute, the general rule is that the notary must exercise the care and prudence of the ordinary cautious man to assure himself that the person making the acknowledgment is the one whose signature appears upon the instrument.[7] However, the procedure to be followed by officers taking acknowledgments, with respect to ascertaining the true identity of their makers, is regulated by statute in most of our jurisdictions. These statutes fall into several classes. One group requires that the officer taking the acknowledgment must "know or have satisfactory evidence" that the person making it is the one whose signature appears upon the instrument.[8] Another requires him to certify simply that the acknowledger is known to him to be the one whose signature appears,[9] while still another demands that he state that the acknowledgor is known to him to be, or proved on the oath or affirmation of at least one credible witness to be, the one whose signature is on the document.[10] Still other jurisdictions make the same requirement as the foregoing, except that they demand at least two witnesses.[11]

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[4]Pennsylvania Trust Co. *v.* Kline (1899) 192 Pa. 1, 43 Atl. 401; see Riddle *v.* Keller (1901) 61 N. J. Eq. 513, 518, 48 Atl. 818; Orendorff *v.* Suit (1910) 167 Ala. 563, 52 So. 744.

[5]Conn. Gen. Stat., 1918, §5084; Ill. Ann. Stat., 1913, §2252; Ind., Burns' Ann. Stat., 1914, §9535; Mass. Rev. Laws, 1902, c. 127, §8; N. Y. Consol. Laws, c. 50 (Laws of 1909, c. 52, amend. Laws of 1915, c. 190) §298. These statutes are typical of those in existence in all the states. The taking of acknowledgments, once a solemn act done in open court, has been so generally entrusted to inferior officers that one judge has remarked, in sarcastic vein, that the power to take the acknowledgment of a married women "has not yet been given to policemen". McKaskill *v.* McKinnon (1897) 121 N. C. 214, 221, 28 S. E. 265.

[6]Commonwealth *v.* Haines (1881) 97 Pa. 228; Henderson *v.* Smith (1885) 26 W. Va. 829.

[7]See Commonwealth *v.* Johnson (1906) 123 Ky. 437, 96 S. W. 801; Barnard *v.* Schuler, *supra,* footnote 2.

[8]Fla. Comp. Laws, 1914, §2486; Neb. Rev. Stat., 1913, §6209; N. Y. Consol. Laws, c. 50 (Laws of 1909, c. 52) §303; Ore., Lord's Code, 1913, §7119.

[9]Ala. Civ. Code, 1907, §3361; Mass. Rev. Laws, 1902, c. 127, §18; Mich. Comp. Laws, 1915, §11755; Minn. Gen. Stat., 1913, §5740; Kan. Gen. Stat., 1915, §2060; R. I. Gen. Laws, 1909, c. 253, §5; Wis. Stat., 1917, §2216*a*; Wash., Remington's Code and Stat., 1915, §8761; Wyo. Comp. Stat., 1910, §3644.

[10]Ariz. Rev. Stat., 1913, §2074; Colo., Mills' Ann. Stat., 1912, §838; Del. Rev. Code, 1915, §3208; Idaho Rev. Code, 1908, §3131; Ill., Jones & Add. Rev. Stat., 1913, §2256; Mont. Rev. Codes, 1907, §4663; Nev. Rev. Laws, 1912, §1023; N. D. Comp. Laws, 1913, §§5567, 5574; S. D. Rev. Code, 1919, §587; Utah Comp. Laws, 1917, §4885; Tex. Rev. Civ. Code, Art. 6797.

[11]Mo. Rev. Stat., 1909, §§2798, 2799; N. M. Stat., Cod. of 1915, §8.

Some statutes stipulate that the officer certify that the acknowledgor is known to be the "identical" person whose signature appears,[12] and one jurisdiction requires that the acknowledgor be "well known."[13]

It is to be expected, because of the variation in the wording of the statutes, that different jurisdictions should hold divergent views on the question of what constitutes negligence in ascertaining the true identity of the acknowledgor. In the principal case the statute required the notary to certify that the acknowledgor was personally known to him to be the signor of the instrument, or, failing that, to satisfy himself of that fact on proof by two credible witnesses.[14] The court held that he was negligent, despite the hard circumstances of the case, because he had failed to avail himself of the alternative procedure, which it found to be advisable under the facts. This represents the prevailing view; *viz.*, that a brief acquaintance based on a mere introduction, does not afford ground for stating that the notary "knows" the individual in question.[15] And, it would seem, one court has gone so far as to make the notary, in such a case, practically an insurer.[16] Of course, where the plaintiff's own negligence causes the loss[17] or where that of the notary is not its proximate cause,[18] there is no liability. And, in New York, it has been held that if the notary is "satisfied" of the identity of the acknowledgor, he is not liable for damages accruing to those who, in good faith, rely on his certification.[19] Though the application of the general rule seems to produce a harsh result, sound public policy requires this sort of protection for those who rely daily upon the certifications of notaries and other officers, and deal with written instruments on the assumption that, being duly acknowledged, they are authentic.[20]

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[12]Iowa Code, 1897, §2948; Okla Rev. Laws, 1910, §1179.

[13]D. C. Code of Laws, 1919, §493.

[14]Deering's Cal. Civ. Code, 1915, §1185. In sec. 801 of Deering's Cal. Pol. Code, 1915, is found a specific provision making notaries and their sureties liable for the results of negligent conduct.

[15]Barnard *v.* Schuler, *supra,* footnote 2; Joost *v.* Craig (1901) 131 Cal. 504, 63 Pac. 840; *cf.* Commonwealth *v.* Johnson, *supra,* footnote 7.

[16]See State *ex rel.* Heitkamp *v.* Ryland (1901) 163 Mo. 280, 63 S. W. 819; State *ex rel.* Dominick *v.* Farmer (Mo., 1918) 201 S. W. 955.

[17]Bank of Savings *v.* Murfey (1886) 68 Cal. 455, 9 Pac. 843; see Hatton *v.* Holmes (1893) 97 Cal. 208, 212, 31 Pac. 1131.

[18]State National Bank *v.* Mee (1913) 39 Okla. 775, 136 Pac. 758; State *ex rel.* Dominick *v.* Farmer, *supra,* footnote 16 (nominal damages allowed plaintiff).

[19]Wood *v.* Bach (N. Y. 1869) 54 Barb. 134. But see concurring opinion in People *v.* Schooley (1895) 89 Hun 391, 397, 35 N. Y. Supp. 429, where Van Brunt, P. J., declared that a mere introduction was not enough.

[20]An acknowledgment is "an official act, such as one as business men every day and everywhere must rely upon in the transactions of their business, and they are not required to doubt the truth of such certificate and go out to verify it, before acting on it; on the contrary the law makes a notary's certificate evidence of the fact contained in it, and if it turns out to be false, the notary—not his confiding victim—should suffer the consequences." Bland, P. J., in state *ex rel.* Covenant *etc.* Ins. Co. *v.* Balmer (1898) 77 Mo. App. 463, 473.